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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	CRMLA LICENSE NO.: 413-0865
)	
THE COMMISSIONER OF BUSINESS)	
OVERSIGHT,)	SETTLEMENT AGREEMENT
)	
Complainant,)	
v.)	
)	
PERL MORTGAGE, INC.,)	
)	
Respondent.)	

This Settlement Agreement (Agreement) is entered into between Respondent PERL Mortgage, Inc. (PERL Mortgage), and Complainant, the Commissioner of Business Oversight (Commissioner) (hereafter, the Parties), and is made with respect to the following facts:

Recitals

A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities engaged in the business of lending and servicing residential mortgage loans under the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.).

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1 B. PERL Mortgage is a residential mortgage lender and servicer licensed by the
2 Commissioner pursuant to the CRMLA. PERL Mortgage has its principal place of business located at
3 2936 West Belmont Avenue, Chicago, Illinois 60618.

4 C. Kenneth Perlmutter is the president of PERL Mortgage, and as such, is authorized to
5 enter into this Agreement on behalf of PERL Mortgage.

6 D. Pursuant to Financial Code section 50204, subdivision (e), a licensee may not obtain
7 or induce an agreement or other instrument in which blanks are left to be filled in after execution.

8 E. On or about March 3, 2016, the Commissioner commenced a regulatory examination
9 of PERL Mortgage's books and records under the CRMLA (2016 regulatory examination). Based on
10 the 2016 regulatory examination, the Commissioner concluded that PERL Mortgage had obtained at
11 least five signed blank documents pertaining to per diem interest disclosures in which the
12 disbursement day boxes were blank and left to be filled in after the execution of the disclosures. The
13 Commissioner is of the opinion that PERL Mortgage has violated Financial Code section 50204,
14 subdivision (e).

15 F. Based on the Commissioner's determination that PERL Mortgage violated Financial
16 Code section 50204, subdivision (e), on September 27, 2017, the Commissioner issued and served an
17 Order to Discontinue Violations, Statement of Facts in Support of Order to Discontinue Violations
18 and Notice of Intent to Make Order Final, and accompanying documents (collectively, the Order).

19 G. PERL Mortgage requested an administrative hearing regarding the Order, which is
20 currently set for trial before the Office of Administrative Hearings on February 15, 2018.

21 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
22 forth herein, the Parties agree as follows:

23 **Terms and Conditions**

24 1. Purpose. The purpose of this Agreement is to resolve the issues described above in a
25 manner that avoids the expense of a hearing and possible further court proceedings, is in the public
26 interest, protects consumers, and is consistent with the purposes, policies, and provisions of the
27 CRMLA.

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1 2. Representations by PERL Mortgage. PERL Mortgage represents that it obtained at
2 least five signed blank documents pertaining to per diem interest disclosures in which the
3 disbursement day boxes were blank; but denies that they were left to be filled in after the execution of
4 the disclosures. PERL Mortgage represents that it has a policy of not altering documents after
5 execution and that nothing was filled in after execution.

6 3. Order to Discontinue Violations. PERL Mortgage agrees to the issuance of an Order to
7 Discontinue Violations, pursuant to Financial Code section 50321, attached as Exhibit A. PERL
8 Mortgage agrees to comply with the Commissioner's Order to Discontinue Violations, and further,
9 stipulates that the Order to Discontinue Violations is hereby deemed a final and enforceable order
10 issued pursuant to the Commissioner's authority under Financial Code section 50321.

11 4. Failure to Comply. PERL Mortgage agrees that if it fails to comply with any of the
12 terms of this Agreement, the Commissioner may, in her discretion, move to revoke PERL Mortgage's
13 residential mortgage lender and servicer license.

14 5. Waiver of Hearing Rights. PERL Mortgage agrees and acknowledges this Agreement
15 shall have the effect of withdrawing all requests for an administrative hearing on the matter set forth
16 herein. PERL Mortgage further acknowledges its right to an administrative hearing under the
17 CRMLA in connection with the Order, and to any reconsideration, appeal, or other right which may
18 be afforded under the CRMLA (Fin. Code, § 5000 et seq.); the Administrative Procedure Act (Govt.
19 Code, § 11370 et seq.); the Code of Civil Procedure (Code of Civ. Proc., § 1, et seq.) or any other
20 provision of law.

21 6. Voluntary Agreement. PERL Mortgage enters into this Agreement voluntarily and
22 without coercion, and acknowledges that no promises, threats, or assurances have been made by the
23 Commissioner or any officer, or agent thereof, about this Agreement.

24 7. Third Party Actions. The parties agree that this Order does not create any private
25 rights or remedies against PERL Mortgage, create any liability for PERL Mortgage, constitute
26 evidence of any wrongdoing by PERL Mortgage for purposes of any third-party proceeding, or limit
27 defenses of PERL Mortgage for any person or entity not a party to this Order.

28 8. Full and Final Settlement and Release. The Parties hereby acknowledge and agree

1 that this Agreement is intended to constitute a full, final, and complete resolution of the violations of
2 the CRMLA, identified in paragraph E, above, and through the effective date of this Agreement
3 (hereafter, Released Matters). No further proceedings or actions will be brought by the Commissioner
4 in connection with the Released Matters, except an action to revoke PERL Mortgage's residential
5 mortgage lender and servicer license to enforce compliance with the terms of this Agreement, as
6 specified in paragraph 4, if PERL Mortgage fails to comply with any of the terms of this Agreement.
7 Notwithstanding this paragraph, the Commissioner may commence a proceeding or action based
8 upon any violation which PERL Mortgage knowingly concealed from the Commissioner. With
9 respect to any further allegations or actions, PERL Mortgage reserves all rights under applicable law,
10 unless otherwise waived in this Agreement. The Parties further acknowledge and agree that nothing
11 contained in this Agreement shall operate to limit the Commissioner's ability to assist any other
12 agency (city, county, state or federal) with any prosecution, administrative, civil or criminal, brought
13 by any such agency against PERL Mortgage based upon any of the activities alleged in these matters
14 or otherwise.

15 9. Independent Legal Advice. Each of the Parties represents and warrants that they have
16 received independent advice from their attorneys and/or other representatives with respect to the
17 advisability of executing this Agreement.

18 10. No Other Representation. Each of the Parties represents, warrants, and agrees that in
19 executing this Agreement they have relied solely on the statements set forth in this Agreement and
20 the advice of their own attorneys and/or representatives. Each of the Parties represents, warrants, and
21 agrees that in executing this Agreement, they have placed no reliance on any statement,
22 representation, or promise of any other party, or any person or entity not expressly set forth herein, or
23 upon the failure of any party or any other person or entity to make any statement, representation, or
24 disclosure of anything whatsoever. The Parties have included this clause: (1) to preclude any claim
25 that any party was in any way fraudulently induced to execute this Agreement; and (2) to preclude the
26 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
27 Agreement.

28 11. Modifications and Qualified Integration. No amendment, change or modification of

this Agreement shall be valid or binding to any extent unless it is in writing and signed by all the Parties affected by it.

12. Full Integration. This Agreement is the final written expression and the complete and exclusive statement of all stipulations, agreements, conditions, promises, representations, and covenants between the Parties with respect to the matter hereof, and supersedes all prior or contemporaneous agreements, discussions, negotiations, representations, and understandings between and among the Parties, their respective representatives, and any other person or entity, with respect to the subject matter covered in this Agreement.

13. Presumption from Drafting. In that the Parties have had the opportunity to draft, review and edit the language of this Agreement, no presumption for or against any party arising out of drafting all or any part of this Agreement will be applied in any action relating to, connected to, or involving this Agreement. Accordingly, the Parties waive the benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

14. Waiver. The waiver of any provision of this Agreement shall not operate to waive any other provision set forth herein, and any waiver, amendment and/or change to the terms of this Agreement must be in writing and signed by the Parties.

15. Counterparts. This Agreement may be executed in any number of counterparts by the Parties, and when each party has signed and delivered at least one such counterpart to the other party, each counterpart shall be deemed an original, and taken together shall constitute one and the same Agreement.

16. Signatures. This Agreement may be executed by facsimile or scanned signature, and any such facsimile or scanned signature by any party hereto shall be deemed to be an original signature and shall be binding on such party to the same extent as if such facsimile or scanned signature were an original signature.

17. Governing Law. This Agreement shall be construed and enforced in accordance with and governed by California law.

18. Effective Date. This Agreement shall not become effective until signed by all

Parties and delivered by the Commissioner's counsel by email at: affi.eghbaldari@dbo.ca.gov.

19. Public Record. PERL Mortgage acknowledges that this Agreement is a public record.

20. Authority to Execute. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Agreement.

Dated: February 13, 2018

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
Mary Ann Smith
Deputy Commissioner
Enforcement Division

PERL MORTGAGE, INC.

Dated: February 12, 2018

By: _____
Kenneth Perlmutter
President of PERL Mortgage, Inc.

APPROVED AS TO FORM:
BALLARD SPAHR LLP

By _____
Scott M. Pearson
Attorneys for PERL Mortgage, Inc.